

COPY

MAR 11 PM 4:07
 RICHARDSON, CLERK
 NORTHERN DISTRICT OF CALIFORNIA
 CLERK'S OFFICE

1 LAURENCE F. PULGRAM (CSB NO. 115163)
 2 *lpulgram@fenwick.com*
 2 ALBERT L. SIEBER (CSB NO. 233482)
 3 *asieber@fenwick.com*
 3 LIWEN A. MAH (CSB NO. 239033)
 4 *lmah@fenwick.com*
 4 FENWICK & WEST LLP
 5 555 California Street, 12th Floor
 5 San Francisco, CA 94104
 6 Telephone: (415) 875-2300
 6 Facsimile: (415) 281-1350
 7 PATRICK E. PREMO (CSB NO. 184915)
 8 *ppremo@fenwick.com*
 8 DENNIS FAIGAL (CSB NO. 252829)
 9 *dfaigal@fenwick.com*
 9 FENWICK & WEST LLP
 10 Silicon Valley Center
 10 801 California Street
 11 Mountain View, CA 94041
 11 Telephone: (650) 988-8500
 11 Facsimile: (650) 938-5200
 12
 12 Attorneys for Plaintiff
 13 SUCCESSFACTORS, INC.
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

FENWICK & WEST LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

SUCCESSFACTORS, INC., a Delaware corporation,

Case No. CV 08 1376 EDL

Plaintiff,

[PROPOSED] ORDER GRANTING PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

v.

SOFTSCAPE, INC., a Delaware corporation; and DOES 1-10, inclusive,

Defendants.

On _____, 2008 at ____ A.M. in Courtroom ____ before the Honorable _____, Plaintiff SuccessFactors, Inc. ("SuccessFactors" or "Plaintiff") applied *ex parte* for a temporary restraining order ("TRO"). Laurence F. Pulgram and Patrick E. Premo

1 appeared on behalf of Plaintiff. _____ appeared on behalf of Defendant
 2 Softscape, Inc. ("Softscape" or "Defendant").

3 After considering the papers submitted by the parties and the arguments of counsel, and
 4 good cause appearing therefore, **IT IS HEREBY ORDERED THAT** Plaintiff SuccessFactors'
 5 *ex parte* application is granted.

6 **I. TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WITH
 7 RESPECT TO PLAINTIFF'S ELECTRONIC DOCUMENTS**

8 The application of Plaintiff for a temporary restraining order having been considered by
 9 the Court, the Court finds:

- 10 1. Defendant Softscape has threatened, or is about to do, or is procuring or suffering
 11 to be done, some act in violation of the rights of Plaintiff respecting the subject of
 12 the action, and tending to render the remedies Plaintiff seeks ineffectual.
- 13 2. Plaintiff is likely to suffer great or irreparable injury before a hearing on noticed
 14 motion for an injunction can be held.
- 15 3. Pecuniary compensation would not afford Plaintiff adequate relief.
- 16 4. Plaintiff is likely to succeed on the merits of its claims of (a) false and misleading
 17 statements under 15 U.S.C. § 1125 and Cal. Bus. & Prof. Code §§ 17500 *et seq.*,
 18 (b) trademark infringement under 15 U.S.C. §§ 1114 and 1125, (c) violation of the
 19 Computer Fraud and Abuse Act (CFAA) under 18 U.S.C. § 1030, and (d)
 20 unauthorized access to computers, computer systems and computer data under Cal.
 21 Penal Code § 502.
- 22 5. The balance of hardships is in favor of granting the temporary restraining order.
- 23 6. Plaintiff is not required to post a bond as it is not likely that Defendant will suffer
 24 any damage as a result of this temporary restraining order.

25 **GOOD CAUSE HAVING BEEN SHOWN THEREFOR, IT IS ORDERED THAT:**

26 **Defendant Softscape**, and its agents, servants, and employees, and all persons acting
 27 under, in concert with or for them, or anyone who receives actual notice of this Order are hereby
 28 restrained during the pendency of this action from doing or attempting to do, the following:

1 a. Publishing, circulating, e-mailing, making available, or otherwise
2 distributing the Presentation entitled "SUCCESSFACTORS Workforce Performance
3 Management: The Naked Truth" (the "Presentation"), or any other product or document that
4 infringes upon SuccessFactors' trademarks or tradenames, and to refrain from using the
5 SuccessFactors' names or marks in any way beyond the minimum necessary to identify
6 SuccessFactors' product or service in connection with the promotion, marketing, offer for sale, or
7 distribution of human resource management products;

8 b. Publishing, circulating, e-mailing, making available, or otherwise
9 distributing or encouraging distribution of the Presentation, or from communicating by
10 documentary, electronic, or oral means, any other information known to contain false, misleading,
11 and/or deceptive statements regarding SuccessFactors, its products, its business, or its customer
12 relationships, and specifically including any false statements about SuccessFactors' customer
13 retention rate;

14 c. Accessing for any reason any computer system or computer owned,
15 operated, or licensed by SuccessFactors and subject to restrictions on access without
16 SuccessFactors' express written authorization, and to not use, disclose, publish, reproduce or
17 communicate any information or data heretofore received from any such computer or computer
18 system accessed without authorization; and

19 d. Wrongfully interfering with or disrupting any prospective economic
20 relations SuccessFactors has with any prospective customers by use of the Presentation, any false
21 or deceptive statement, or use of materials obtained from any computer or computer network
22 without authorized access.

23 **Defendant Softscape** is further ordered to appear in Courtroom ___ in the United States
24 District Court for the Northern District of California (San Francisco Division), located at
25 450 Golden Gate Avenue, San Francisco, California on March ___, 2008 at ___ A.M., then and there
26 to show cause why it and its agents, servants, and employees, and all persons acting under, in
27 concert with, or for them, or anyone who receives actual notice of this Order should not be enjoined
28 ///

1 and restrained pending resolution of this action in the manner set forth above and as sought in
2 Plaintiff's Motion for Preliminary Injunction.

3 This Temporary Restraining Order shall remain in full force and effect unless and until a
4 further order of this Court issues dissolving or modifying the same, or on March __, 2008 at
5 __ A.M., at which time the Court will consider Plaintiff's motion for preliminary injunction,
6 whichever comes first.

7 **II. SCHEDULING**

8 The Court sets the following briefing schedule for Plaintiff's motion for preliminary
9 injunction:

10 1. Defendant's opposition brief(s) or statement(s) of non-opposition must be filed in
11 the Court and served on counsel for Plaintiff on or before March __, 2008.
12 2. Plaintiff's reply brief must be filed in this Court on or before March __, 2008.

13 **IT IS SO ORDERED.**

14
15 Dated: March __, 2008

16 The Honorable _____
17 United States District Judge

18 1281644
19
20
21
22
23
24
25
26
27
28